

Floodplain Shoreland/ Wetland Ordinance

1.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT, STATEMENT OF PURPOSE AND TITLE

1.1 STATUTORY AUTHORIZATION

This ordinance is adopted pursuant to the authorization in ss. 61.35 and 61.351 for villages; 62.23 and 62.231 for cities; and ss. 87.30 and 144.26, Wis. Stats.

1.2 FINDINGS OF FACT

Uncontrolled development and use of the shoreland-wetlands, floodplains, rivers and streams, and the pollution of the navigable waters of this municipality would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature has delegated responsibility to municipalities to maintain safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; and preserve shore cover and natural beauty.

1.3 PURPOSE

To promote the public health, safety, convenience and general welfare, and protect life, health and property this ordinance has been established to:

- (1) Maintain the storm and flood water storage capacity of wetlands;
- (2) Prevent and control water pollution by preserving wetlands which filter or store sediments, nutrients, heavy metals or organic compounds that would otherwise drain into waters of the state;
- (3) Protect fish spawning grounds, fish, aquatic life and wildlife by preserving wetlands and other fish and aquatic habitat;
- (4) Prohibit certain uses detrimental to the shoreland-wetland area;
- (5) Preserve shore cover and natural beauty by restricting shoreland and wetland excavation, filling and other earth moving activities;
- (6) Minimize expenditures of public monies for flood control projects;

(7) Reduce rescue and relief efforts, generally undertaken at the expense of the tax paying public;

(8) Prevent business interruptions which usually result in the loss of local incomes;

(9) Reduce damage to public facilities such as utilities, buildings, streets and bridges which may be located in floodplains;

(10) Prevent the occurrence of future flood blight areas on floodplains;

(11) Discourage the victimization of unwary land and home buyers; and

(12) Prevent increases in regional flood heights which could increase damage during floods and which may result in conflicts or litigation between property owners.

1.4 TITLE

This ordinance shall be known as the Floodplain and Shoreland-Wetland Zoning Ordinance for City of Buffalo City and Village of Cochrane, Wisconsin.

2.0 GENERAL PROVISIONS

2.1 COMPLIANCE - OTHER PERMITS

Any development, as defined in s. 9.2, in floodplains and shoreland-wetlands shall be in full compliance with the terms of this ordinance. (However, see S. 5.0 of this ordinance, for the standards applicable to nonconforming uses.) It is the responsibility of the applicant to secure all other necessary permits from appropriate federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334.

2.2 MUNICIPALITIES AND STATE AGENCIES REGULATED

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if s.13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when s.30.12(4)(a), Wis. Stats., applies.

2.3 ABROGATION AND GREATER RESTRICTIONS

This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under s.62.23 for

cities or 61.35 for villages or 87.30, Wis. Stats., which relate to shoreland-wetlands and floodplains, except if another municipal zoning ordinance is more restrictive than the provisions contained in this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise. The more restrictive of the Shoreland-Wetland District or Floodplain District regulations shall apply when a property is located in both zoning districts.

This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, if this ordinance is more restrictive, the provisions of this ordinance shall prevail.

2.4 INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in chs. NR 116 or NR 117 Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted according to the standards in effect in chs. NR 116 or NR 117 on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

2.5 SEVERABILITY

Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

2.6 WARNING AND DISCLAIMER OR LIABILITY

The degree of flood protection this ordinance provides is reasonable for regulatory purposes and is based on engineering experience and scientific study. Larger floods may occur or the flood height may be increased by man-made or natural causes such as ice jams or bridge openings restricted by debris. Therefore, this ordinance does not imply that areas outside of the delineated floodplain or permitted land uses within the floodplain will be totally free from flooding and associated flood damages. Nor does

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this ordinance create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.

2.7 ZONING MAPS

The maps designated below are hereby adopted and made part of this ordinance. The boundaries of the floodplain districts, including the floodway, floodfringe, and other floodplain districts are those areas designated as floodplains or A-Zones on the following maps and by elevation comparisons to the following regional flood elevations and adopted profiles. They are on file in the office of the City Clerk/Village Clerk. If more than one map is referenced, the most restrictive shall apply.

(1) Floodplain zoning maps titled Flood Insurance Rate Map (FIRM) and dated November 7, 1975 for City of Buffalo City and dated May 23, 1975 for the Village of Cochrane.

Approved by:

(2) United States Geological Survey Quadrangle Maps of most recent date.

(3) Wisconsin Wetland Inventory maps stamped "FINAL" on 1/21/88 for City of Buffalo City and 10/28/93 for Village of Cochrane.

2.8 ANNEXED AREAS

The zoning of annexed lands shall comply with the provisions of s.59.97(7) and 59.971(7) Stats. Annexed lands are designated on the municipality's official zoning map. The Buffalo County shoreland and floodplain zoning provisions are incorporated by reference for administering this section and are on file in the office of the municipal zoning administrator.

(1) Annexed Floodplains

The Buffalo County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all areas annexed by the municipality until the municipality adopts and enforces an ordinance which meets the requirements of ch. NR 116, Wis. Adm. Code.

(2) Annexed Shorelands

The Buffalo County shoreland zoning provisions in effect on the date of annexation remain in effect administered by the municipality for

all shoreland areas annexed by the municipality after May 7, 1982.

3.0 SHORELAND-WETLAND ZONING DISTRICT

3.1 DISTRICT BOUNDARIES OF SHORELAND-WETLAND

(1) The shoreland-wetland zoning district includes all wetlands in the municipality which (are five acres or more in size and) are shown on the final Wetland Inventory Map that has been adopted and made a part of this ordinance in s.2.7 and which are:

(a) Within one thousand (1,000) feet of the ordinary highwater mark of navigable lakes, ponds or flowages.

Lakes, ponds or flowages in the municipality shall be presumed to be navigable if they are listed in the Department publication "Surface Water Resources of Buffalo County" or are shown on the United States Geological Survey quadrangle maps or other zoning base maps which have been made a part of this ordinance in s.2.7. Lakes, ponds and flowages not listed in the publications or maps referenced in this section shall be evaluated on a case-by-case basis to determine whether they are navigable under the laws of the state following the procedure in s.3.1(2) of this ordinance.

(b) Within three hundred (300) feet of the ordinary highwater mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater.

Rivers and streams shall be presumed to be navigable if they are designated as either continuous or intermittent waterways on the United States Geological Survey quadrangle maps or other zoning base maps which have been incorporated by reference and made a part of this ordinance in s.2.7. Rivers and streams not shown on the maps referenced in this section shall be evaluated on a case-by-case basis to determine whether they are navigable under the laws of the state following the procedure found in s.3.1(2) of this ordinance. Floodplain zoning maps adopted in s.2.7 shall be used to determine the extent of floodplain areas.

(2) Determinations of navigability and ordinary highwater mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator shall contact the appropriate district office of the Department for a final determination

of navigability or ordinary highwater mark.

(3) When an apparent discrepancy exists between the shoreland-wetland district boundary shown on the official zoning maps and the actual field conditions at the time the maps were adopted, the zoning administrator shall contact the appropriate district office of the Department to determine if the shoreland-wetland district boundary as mapped is in error. If Department staff concur with the zoning administrator that a particular area was incorrectly mapped as a wetland, the zoning administrator shall have the authority to immediately grant or deny a land use or building permit in accordance with the regulations applicable to the correct zoning district. In order to correct wetland mapping errors shown on the official zoning maps, the zoning administrator shall be responsible for initiating a map amendment within a reasonable period.

(4) Under s.144.26(2m), Wis. Stats., notwithstanding any other provision of law or administrative rule, wetland zoning ordinances required under Wis. Stats., ss.61.351 for villages or 62,231 for cities and ch. NR 117, Wis. Adm. code, do not apply to lands adjacent to farm drainage ditches if;

(a) Such lands aren't adjacent to a natural navigable stream or river;

(b) Those parts of the drainage ditches adjacent to such lands were not navigable streams before ditching; and

(c) Such lands are maintained in nonstructural agricultural use.

3.2 PERMITTED USES IN SHORELAND-WETLANDS (NOTE: Under NR 117.05(2), Wis. Adm. Code, cities and villages may permit, authorize as a conditional use or prohibit the following uses of shoreland-wetlands.)

The following uses are permitted subject to the provisions of chs. 30 and 31, Wis. Stats., and the provisions of other local, state and federal laws, if applicable:

(1) Activities and uses which do not require the issuance of a zoning permit, provided that no wetland alteration occurs:

(a) Hiking, fishing, trapping, hunting, swimming, snowmobiling and boating;

(b) the harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;

(c) The practice of silviculture, including the planting, thinning and harvesting of timber;

(d) The pasturing of livestock;

(e) The cultivation of agricultural crops; and

(f) The construction and maintenance of duck blinds.

(2) Uses which don't require a zoning permit and which may involve wetland alterations only to the extent specifically allowed below:

(a) The practice of silviculture, including limited temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected;

(b) The cultivation of cranberries, including limited wetland alterations necessary for growing and harvesting cranberries;

(c) The maintenance and repair of existing drainage systems, where permissible under s.30.20, Wis. Stats., to restore pre-existing levels of drainage, including the minimum amount of filling necessary to dispose of dredge spoil, provided that the filling is permissible under ch.30, Wis. Stats., and that dredged spoil is placed on existing spoil banks where possible;

(d) The construction and maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;

(e) The construction and maintenance of piers, docks and walkways, observation decks and trail bridges built on pilings, including limited excavating and filling necessary for such activities;

(f) The installation and maintenance of sealed tiles for the purpose of draining lands outside the shoreland-wetland zoning district if such installation or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the shoreland-wetland listed in s.3.4(1) of this ordinance; and

(g) The maintenance, repair, replacement and reconstruction of existing highways and bridges,

including limited excavating and filling necessary for such activities.

(3) Uses allowed with a (zoning/conditional use) permit and which include wetland alterations only to the extent specifically allowed below:

(a) The construction and maintenance of roads which are necessary for the continuity of the municipal street system, the provision of essential utility and emergency services or to allow access to uses permitted under s.32., if:

1. The road cannot, as a practical matter, be located outside the wetland;

2. The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland listed in s.3.4(1) of this ordinance;

3. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;

4. Road construction activities are carried out in the immediate area of the roadbed only; and

5. Any wetland alteration must be necessary for the construction or maintenance of the road.

(b) The construction and maintenance of nonresidential buildings if:

1. The building is used solely in conjunction with a use permitted in the shoreland-wetland district or for the raising of waterfowl, minnows or other wetland or aquatic animals;

2. The building cannot, as a practical matter, be located outside the wetland;

3. The building doesn't exceed 500 square feet in floor area; and

4. Only limited filling and excavating necessary to provide structural support for the building is allowed.

(c) The establishment and development of public and private parks and recreation areas, outdoor education areas, historic, natural and scientific areas, game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, wildlife preserves and public boat launching ramps, provided that:

1. Any private development allowed under this paragraph shall be used exclusively for the permitted purpose;

2. Only limited filling and excavating necessary for developing public boat launching ramps, swim-

ing beaches or constructing park shelters or similar structures is allowed.

3. Constructing and maintaining roads necessary for the permitted uses under this paragraph is allowed only if such construction and maintenance meets the criteria in s.3.2(3)a; and

4. Wetland alterations in game refuges and closed areas, fish and wildlife habitat improvement projects, game bird and animal farms, and wildlife preserves shall be for improving wildlife habitat or to otherwise enhance wetland values.

(d) The construction and maintenance of electric and telephone transmission lines and water, gas and sewer lines, and related facilities and the construction and maintenance of railroad lines provided that:

1. The transmission and distribution lines and related facilities and railroad lines cannot, as a practical matter, be located outside the wetland;

2. Only limited filling or excavating necessary for such construction or maintenance is allowed; and

3. Such construction or maintenance is done in a manner designed to minimize the adverse impact upon the natural functions of the wetland listed in s.3.4(1).

3.3 PROHIBITED USES IN SHORELAND-WETLANDS

(1) Any use not listed in s.3.2 is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this ordinance in accordance with ss.3.4 and 7.0.

(2) The use of a boathouse for human habitation and the construction or placement of a boathouse or fixed houseboat below the ordinary highwater mark of any navigable waters are prohibited.

3.4 REZONING SHORELAND-WETLANDS

(1) Rezoning of a shoreland-wetland shall require amendment of the Final Wisconsin Wetland Inventory map adopted in s.2.7 of this ordinance pursuant to procedures established in s.7.0. To insure that any amendment will be consistent with the shoreland protection objectives of s.144.26, Stats., the municipality shall not rezone a wetland in a shoreland-wetland zoning district, or any portion thereof, where the proposed rezoning may result in a

significant adverse impact upon any of the following:

(a) Storm and flood water storage capacity;

(b) Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;

(c) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would drain into navigable waters;

(d) Shoreline protection against soil erosion;

(e) Fish spawning, breeding, nursery or feeding grounds;

(f) Wildlife habitat; or

(g) Special recreational, scenic or scientific interest areas, including scarce wetland types and endangered species habitat.

(2) Upon notification of a proposed amendment as required by s.7.0, if the district office of the Department determines that a proposed rezoning may have a significant adverse impact upon any of the criteria listed in s.3.4(1), of this ordinance, the Department shall so notify the municipality of its determination either prior to or during the public hearing held on the proposed amendment.

(3) If the Department notifies the municipal planning agency in writing that a proposed amendment may have a significant adverse impact upon any of the criteria listed in s.3.4(1), that proposed amendment, if approved by the municipality, shall not become effective until more than 30 days have elapsed since written notice of the council or board approval was mailed to the Department, as required by s.7.0. If the Department notifies the council or board within the 30 day period that it intends to adopt a superseding shoreland-wetland zoning ordinance for the municipality under ss.62.231(6) or 61.351(6), Wis. Stats., the proposed amendment shall not become effective until that ordinance adoption procedure is completed or otherwise terminated. The record of the council or board decision on the proposed amendment shall advise the petitioner of the provisions of this section.

4.0 FLOODPLAIN ZONING DISTRICT

4.1 GENERAL PROVISIONS FOR ALL FLOODPLAINS

(1) AREAS TO BE REGULATED

This ordinance regulates all areas within the incorporated limits of the municipality that would be covered by the "regional flood" as defined in s.9.2, including floodplain islands as defined in s.9.2.

(2) ESTABLISHMENT OF DISTRICTS

The regional floodplain areas within the jurisdiction of this ordinance are divided into three districts:

(a) The Floodway District (FW) is the channel of a river or stream and those portions of the floodplain adjoining the channel that are required to carry and discharge the regional flood waters.

(b) The Floodfringe District (FF) is that portion of the floodplain between the regional flood limits and the floodway.

(c) The General Floodplain District (GFP) is all areas which have been or may be covered by flood water during the regional flood. It includes the floodway and floodfringe districts.

(3) LOCATING FLOODPLAIN BOUNDARIES

If a discrepancy exists between the location of the outermost boundary of the flood fringe district or general floodplain district on the official floodplain zoning map and actual field conditions, the district boundary shall be initially determined by the zoning administrator using the criteria in paragraphs (a) or (b) below. If the zoning administrator finds a significant difference between the district boundary shown on the map and the actual field conditions, the map shall be amended using the procedures in s.4.1(9). Disputes between the zoning administrator and an applicant over the location of the district boundary shall be settled by the Board of Appeals according to s.65.(4).

(a) Where flood profiles exist, the district boundary shall be determined by the zoning administrator using both the map scale and the elevations on the water surface profile of the regional flood. If a discrepancy exists between the boundary location and actual field conditions, the regional flood elevations govern. A map amendment is required if there is a significant discrepancy between the map and actual field conditions. The zoning

administrator shall have the authority to immediately grant or deny a land use permit based on a district boundary derived from the elevations on the water surface profile of the regional flood, whether or not a map amendment is required. The zoning administrator shall initiate any map amendments required under this section within a reasonable period of time.

(b) If flood profiles don't exist, the district boundary shall be determined by the zoning administrator using the map scale, visual on-site inspection and any available information provided by the Department. If there is a significant discrepancy between the district boundary on the map and actual field conditions, the map shall be amended. If a map amendment has been approved by both the municipal governing body and the Department, the zoning administrator shall have the authority to grant or deny a land use permit.

(4) REMOVAL OF LANDS FROM FLOODPLAIN

Compliance with this ordinance shall not be grounds for removing lands from the floodplain district, unless they are removed by filling to a height of at least two feet above the regional flood elevation, the fill is contiguous to lands outside the floodplain district, and the map is amended pursuant to s.4.1(9). To remove flood insurance requirements, FEMA must first revise the Flood Insurance Rate Map, or issue a Letter of Map Amendment or Revision.

(5) HYDRAULIC AND HYDROLOGIC ANALYSES

(a) Except as provided in par. (b) below, no development shall be allowed in floodplain areas which will:

1. Cause an obstruction to flow, defined in s.9.2 as any development which physically blocks the conveyance of floodwaters by itself or in conjunction with future similar development causing an increase in regional flood height; and

2. Cause an increase in regional flood height due to floodplain storage areas lost, which is equal to or exceeding 0.01 foot;

(b) Obstructions or increases equal to or greater than 0.01 foot may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, including

flood way lines and water surface profiles, according to ss.4.1(9) and 7.0, and if the cumulative effect of the development will not increase the regional flood height more than 1.0 foot for the affected hydraulic reach of the stream unless a waiver is secured from FEMA for the 1.0 foot maximum increase.

(c) The zoning administrator shall deny permits if the proposed development will cause an obstruction to flow or increase in regional flood height of 0.01 foot or greater.

(6) WATERCOURSE ALTERATIONS

Prior to any alteration or relocation of a watercourse, and prior to issuing any land use permit required for such activities, the local zoning official shall notify adjacent municipalities, the Department district office and the appropriate FEMA office, and shall require the applicant to secure all necessary state and federal permits. The flood carrying capacity within the altered or relocated portion of any watercourse shall be maintained.

(7) FLOODPROOFING

(a) Floodproofing measures shall be designed to:

1. Withstand the flood pressures, depths, velocities, uplift and impact forces, and other factors associated with the regional flood; and

2. Assure protection to the flood protection elevation; and

3. Anchor structures to foundations to resist flotation and lateral movement; and

4. Insure that structural walls and floors are watertight to the flood protection elevation, and the interior remains completely dry without human intervention during flooding.

(b) No permit or variance shall be issued until the applicant submits a plan or document certified by a registered professional engineer or architect that the floodproofing measures are adequately designed to protect the structure or development to the flood protection elevation for the area.

(c) Floodproofing measures could include:

- Reinforcing walls and floors to resist rupture or collapse caused by water pressure or floating debris;

- Adding mass or weight to structures to prevent flotation;

- Placing utilities above the flood protection elevation;

- Surface or subsurface drainage systems - including pumping facilities - to relieve external foundation wall and basement floor pressures;

- Constructing water supply wells and waste treatment systems to prevent flood waters from entering such systems;

- Cutoff valves on sewer lines and eliminating gravity flow basement drains.

(8) AMENDMENTS

(a) When amendments are required, the procedures in s.7.0 shall apply. Actions requiring an amendment include, but are not limited to, the following:

1. Any change to the official floodplain map including the floodway line or boundary of the floodplain area;

2. Correction of significant discrepancies between the water surface profiles and floodplain zoning maps;

3. Any fill in the floodplain which elevates the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;

4. Any fill or encroachment into the floodplain that will obstruct flow or cause an increase of 0.01 foot or more in the height of the regional flood; and

5. Any upgrading of floodplain zoning ordinance required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality.

(b) No amendment to the maps or text of this ordinance shall become effective until reviewed and approved by the Department of Natural Resources.

(c) Anyone petitioning for a map amendment involving an obstruction to flow which causes an increase in the regional flood height of 0.01 foot or more shall obtain flooding easements, or other appropriate legal arrangements, from all adversely affected property owners and notify affected local units of government before the amendment can be approved by the governing body.

(d) When considering amendments to the official floodplain zoning map in areas where no water surface profiles exist, the zoning agency shall consider data submitted by the Department, the zoning

administrator's visual on-site inspections and other available information. (See s.4.1(3))

4.2 FLOODWAY DISTRICT (FW)

(1) APPLICABILITY

This section applies to all areas mapped as floodway on the official floodplain zoning maps, and areas of the general floodplain district determined to be floodway according to the procedures in s.4.4(4).

(2) PERMITTED USES

The following open space uses are allowed within the floodway district and in the floodway of the general floodplain district, provided they are not prohibited by any other regulations, that the standards in ss.4.2(3)(4) are met, and that all permits or certificates required in this ordinance have been issued:

(a) Agricultural uses such as: general farming, pasturing, outdoor plant nurseries, horticulture, silviculture, truck farming, forestry, sod farming and wild crop harvesting.

(b) Nonstructural industrial and commercial uses such as: loading areas, parking areas and airport landing strips.

(c) Private and public recreational uses such as: golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails.

(d) Uses or structures accessory to open space uses, or those classified as historic structures, provided they are not in conflict with the provisions in ss.4.2(3)(4) below.

(e) Extraction of sand, gravel or other materials, according to s.4.2(3)(d).

(f) Functionally water-dependent uses such as docks, piers or wharves, including those uses as part of a marina, and other water related uses, such as dams, flowage areas, culverts, navigational aids and pipelines, according to chs. 30 or 31, Wis. Stats.

(g) Public utilities, streets and bridges, according to s.4.2(3)(c).

(3) STANDARDS FOR DEVELOPMENTS IN FLOODWAY AREAS

(a) GENERAL



1. Any development in floodway areas shall meet all of the provisions of s.4.1; and have a low flood damage potential.

2. Applicants shall provide the following data for the zoning administrator to determine the effects of the proposal according to s.4.1(5):

a. A cross-section elevation view of the proposal perpendicular to the watercourse, indicating whether the proposed development will obstruct flow; and

b. An analysis calculating the effects of this proposal on regional flood height.

3. The zoning administrator shall deny the permit application where it is determined the project will increase flood elevations upstream or downstream 0.01 foot or more, based on the data submitted for par. 2 above.

(b) STRUCTURES

In or over floodway areas, only structures which are accessory to permitted open space uses, classified as historic structures, or are functionally dependent on a waterfront location may be allowed by permit, if the structures meet all of the following criteria:

1. The structures are not designed for human habitation;

2. The structures are constructed and placed on the building site so as to cause less than 0.01 foot increase in flood height and offer minimum obstruction to flood flows. Structures shall be constructed with the longitudinal axis parallel to the direction of flow, and approximately on the same line as those of adjoining structures;

3. The structures are firmly anchored to prevent them from floating away and restricting bridge openings or other restricted sections of the stream or river; and

4. The structures have all service facilities, such as electrical and heating equipment at or above the flood protection elevation for the particular area.

(c) Public utilities, streets and bridges may be allowed by permit, provided that:

1. Adequate floodproofing measures are provided to the flood protection elevation;

2. Construction does not cause an increase in the height of the regional flood according to s.4.1(5), except where the water surface

profiles, floodplain zoning maps and floodplain zoning ordinance are amended as needed, to reflect any changes resulting from such construction.

(d) Fills or deposition of materials may be allowed by permit, provided that:

1. The requirements of Section 4.1 are met;

2. The fill or deposition of materials does not encroach on the channel area between the ordinary highwater mark on each bank of the stream unless a ch. 30 permit has been granted by the Department and a permit pursuant to Section 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1334 has been issued, if applicable, and the other requirements of this section are met;

3. The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading sufficient to prevent erosion; and

4. Such fills are not associated with private or public solid waste disposal.

(4) PROHIBITED USES

All uses not listed as permitted in s.4.2(2) are prohibited along with the following uses which are always prohibited in floodways and the floodway portions of the general floodplain:

(a) The storage of any materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or other aquatic life;

(b) Any uses which are not in harmony with, or which may be detrimental to the uses permitted in the adjoining districts;

(c) All private or public on-site sewage disposal systems except portable latrines that are removed during flooding, and systems associated with public recreational areas and Department approved campgrounds that meet the applicable provisions of Ch. ILHR 83, Wis. Adm. Code;

(d) All public or private water wells for human consumption, except those for recreational areas that meet the requirements of local ordinances and chs. NR 111 and NR 112, Wis. Adm. Code;

(e) All public or private solid or hazardous waste disposal sites;

(f) All wastewater treatment ponds or facilities, except those permitted under Ch. NR 110.15(3)(b), Wis. Adm. Code.

(g) All sanitary sewer or water lines except those used to service existing or proposed development outside of the floodway which complies with the regulations for the floodplain area occupied.

4.3 FLOODFRINGE DISTRICT (FF)

(1) APPLICABILITY

This section applies to all areas within the floodfringe district as shown on the official floodplain zoning maps, and to areas of the general floodplain district that are determined to be in the floodfringe according to the procedures in s.4.4(4).

(2) PERMITTED USES

Any structures, land use, or development, including accessory structures and uses, are allowed within the floodfringe district and floodfringe portions of the general floodplain district, provided that the standards contained in ss.4.1 and (3) below are met, that the use is not prohibited by any other ordinance or local, state and Federal regulations and that all permits or certificates required under this ordinance have been issued.

(3) STANDARDS FOR DEVELOPMENT IN FLOODFRINGE AREAS

All of section 4.1 applies along with the following requirements:

(a) RESIDENTIAL USES

Any structure or building used for human habitation, which is to be erected, constructed, reconstructed, altered, or moved into the floodfringe area shall meet or exceed the following standards:

1. The lowest floor, excluding the basement or crawlway, shall be placed on fill at or above the flood protection elevation (two feet above the regional flood elevation) except where par. (2) is applicable. The fill elevation shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. The Department may authorize other floodproofing measures where existing streets or sewer lines are at elevations which make compliance impractical, provided the Board of Appeals grants a variance due to dimensional restrictions.

2. The basement or crawlway flood may be placed at the regional

flood elevation if it's floodproofed to the flood protection elevation. No permit or variance shall allow any floor, basement or crawlway below the regional flood elevation.

3. Contiguous dryland access, defined in s.9.2 as a vehicular access route above regional flood elevation, shall be provided from a structure or building to land which is outside the floodplain, except as provided in par. 4.

4. In existing development where existing streets or sewer lines are at elevations which make compliance with par. 3 impractical, the municipality may permit new development and substantial improvements where access roads are at or below the regional flood elevation, provided:

a. The municipality has written assurances from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles, considering the anticipated depth, duration and velocity of the regional flood event; or

b. The municipality has an adequate natural disaster plan concurred with the Division of Emergency Government and approved by the Department.

(b) ACCESSORY STRUCTURES OR USES

An accessory structure or use as defined in s.9.1, not connected to a principal structure, including nonresidential agricultural structures, shall meet all the applicable provisions of ss.4.2(3)(a)(b)(d) and 4.2(4). A lesser degree of protection, compatible with these criteria and par. (c) below, may be permissible for an accessory structure or use if the site is not inundated to a depth greater than two feet or subjected to flood velocities greater than two feet per second during the regional flood.

(c) COMMERCIAL USES

Any commercial structure or building which is to be erected, constructed, reconstructed, altered or moved into the floodfringe area shall meet the requirements of s.4.3(3)(a). Storage yards, parking lots and other accessory structures or land uses may be at lower elevations, subject to par. (e) below. However, no area in general public use shall be inundated to a depth greater than two feet or subjected to flood velocities greater than two feet per second during the regional flood. Inundation to depths

greater than two feet may be approved if an adequate warning system exists to protect life and property.

(d) MANUFACTURING AND INDUSTRIAL USES

Any manufacturing or industrial structure which is to be erected, constructed, reconstructed, altered or moved into the floodfringe area shall be protected to the flood protection elevation utilizing fill, levees, floodwalls, or other adequate floodproofing measures according to s.4.1(8), or any combination of these. On streams or rivers having prolonged flood durations, greater protection may be required to minimize interference with normal plant operations. A lesser degree of protection, compatible with the criteria in pars. (c) and (e) above, may be permissible for storage yards, parking lots and other similar uses.

(e) STORAGE OR PROCESSING OF MATERIALS

The storage or processing of materials that are buoyant, flammable, explosive, or which in times of flooding could be injurious to human, animal, or plant life, shall be at or above the flood protection elevation for the particular area or floodproofed in compliance with s.4.1 (8). Adequate measures shall be taken to assure that these materials will not enter the river or stream during flooding.

(f) PUBLIC UTILITIES, STREETS AND BRIDGES

All utilities, streets and bridges should be designed to be compatible with the local comprehensive floodplain development plans and:

1. When failure or interruption of public utilities, streets and bridges would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area, construction of, and substantial improvements to, such facilities may only be permitted if they are floodproofed to the flood protection elevation in compliance with s.4.1(8).

2. Minor or auxiliary roads or nonessential utilities may be constructed at lower elevations providing they withstand flood forces to the regional flood elevation.

(g) SEWAGE SYSTEMS, WELLS, SOLID WASTE SITES

1. All on-site sewage disposal systems shall be floodproofed to the flood protection elevation and shall

meet the applicable provisions of all local ordinances and Ch. ILHR 83, Wis. Adm. Code.

2. All public or private wells shall be floodproofed to the flood protection elevation and shall meet the applicable provisions of chs. NR 111 and NR 112, Wis. Adm. Code.

3. All public or private solid or hazardous waste disposal sites are prohibited.

(h) DEPOSITION OF MATERIALS

Deposition of materials for any purpose may only be allowed if the provisions of this ordinance are met.

(i) MOBILE HOMES AND MANUFACTURED HOMES

(a) Owners or Operators of all manufactured or mobile home parks and subdivisions located in the regional floodplain shall provide for adequate surface drainage to minimize flood damage and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with the appropriate local emergency management authorities.

(b) In existing mobile home parks, all new homes with new pads, replacement units or existing pads, and substantially improved mobile/manufactured homes and recreational vehicles that remain on-site in excess of 180 days, or are unlicensed or not ready for highway use and which are placed or improved on a site located in the regional floodplain shall:

- have the lowest floor elevated to the regional flood elevation; and
- be anchored so they do not float, collapse or move laterally during the flood.

(c) Outside of existing mobile home parks: including new mobile home parks, and all single units outside of existing parks; all new, replacement and substantially improved mobile/manufactured homes and recreational vehicles that remain on-site more than 180 days, which are unlicensed or are not ready for highway use, shall meet the residential development standards for the floodfringe in s.4.3(3)(a).

4.4 GENERAL FLOODPLAIN DISTRICT (GFP)

(1) APPLICABILITY

The provisions for this district shall apply to all floodplains, for which regional flood data is not available, or where regional flood data is available but floodways have not been delineated. As adequate regional flood data becomes available and

floodways are delineated for portions of this district, such portions shall be placed in the floodfringe or floodway district as appropriate.

(2) PERMITTED USES

The general floodplain district encompasses both floodway and floodfringe areas. Therefore, a determination shall be made pursuant to par. (4), to determine whether the proposed use is located within a floodway or floodfringe area. Those uses permitted in floodways (s.4.2) and floodfringe areas (s.4.3) are allowed within the general floodplain district, according to the standards of par. (3) and provided that all permits or certificates required under this ordinance have been issued.

(3) STANDARDS FOR DEVELOPMENT IN THE GENERAL FLOODPLAIN DISTRICT

Once it is determined according to par. (4) that a proposed use is located within a floodway, the provisions of s.4.2 shall apply. Once determined that the proposed use is located within the floodfringe, the provisions of s.4.3 shall apply. All provisions of the remainder of this ordinance apply to either district.

(4) DETERMINING FLOODWAY AND FLOODFRINGE LIMITS

Upon receiving an application for development within the general floodplain district, the zoning administrator shall:

(a) Require the applicant to submit with the application two copies of an aerial photograph or a plan which accurately locates the proposed development with respect to the general floodplain district limits, stream channel, existing floodplain developments, and all pertinent information such as the nature of the proposal, legal description of the property, fill limits and elevations, building floor elevations and floodproofing measures.

(b) Require the applicant to furnish any of the following additional information deemed necessary by the Department for evaluation of the effects of the proposal upon flood height and flood flows, the regional flood elevation and, where applicable, to determine the boundaries of the floodway:

1. A typical valley cross-section showing the channel of the stream, the floodplain adjoining each side of the channel, the cross-sectional area to be occupied by the

proposed development, and all historic high water information.

2. Plan (surface view) showing: elevations of contours of the ground; pertinent structure, fill or storage elevations; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information.

3. Profile showing the slope of the bottom of the channel or flow line of the stream.

4. Specifications for building construction and materials; floodproofing; filling; dredging; channel improvement; storage of materials; water supply and sanitary facilities.

(c) Transmit one copy of the information described in paragraphs (a) and (b) to the Department with a written request to provide technical assistance to establish regional flood elevations and, where applicable, floodway data. Where the provisions of s.6.2(2)(c) DATA REQUIREMENTS apply, the applicant shall provide all required information and computations.

5.0 NONCONFORMING STRUCTURES AND USES

5.1 GENERAL PROVISIONS

(1) APPLICABILITY

Insofar as the standards in this Section are not inconsistent with the provisions of s.62.23(7)(h), Stats., they shall apply to all nonconforming uses and nonconforming structures. These regulations apply to the modification of, or addition to, any structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.

(2) The existing lawful use of a structure or building or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

(a) If a nonconforming use or the use of a nonconforming structure is discontinued for twelve (12) consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable provisions of this ordinance.

(b) Any legal nonconforming use of property which does not involve the use of a structure and

which existed at the time of the adoption or subsequent amendment of this ordinance adopted under sections 62.231 or 61.351, Wis. Stats., may be continued although such use does not conform with the provisions of the ordinance. However, such nonconforming use may not be extended or increased.

(c) The maintenance and repair of nonconforming boathouses which are located below the ordinary highwater mark of any navigable waters shall comply with the requirements of section 30.121, Wis. Stats.

(d) Uses which are nuisances under common law shall not be permitted to continue as nonconforming uses.

5.2 SHORELAND WETLANDS

(Note: Due to differences contained in ss.62.231(5) and 61.351(5), Wis. Stats., different nonconforming use standards apply in cities and villages. Cities must adopt the first section 5.2 and villages the second section 5.2 shown below.)

FOR CITIES -- 5.2

Notwithstanding s.62.23(7)(h), Wis. Stats., the repair, reconstruction, renovation, remodeling or expansion of a legal nonconforming structure in existence at the time of adoption or subsequent amendment of this ordinance adopted under s.62.231, Wis. Stats., or of an environmental control facility in existence on May 7, 1982, related to that structure is permitted under s.62.231(5), Wis. Stats. Section 62.23(7)(h), Wis. Stats., applies to any environmental control facility that was not in existence on May 7, 1982, but was in existence on the effective date of this ordinance or amendment.

FOR VILLAGES -- 5.2

Notwithstanding s.62.23(7)(h), Wis. Stats., the repair, reconstruction, renovating, remodeling or expansion of a legal nonconforming structure, or any environmental control facility related to a legal nonconforming structure, in existence at the time of adoption or subsequent amendment of this ordinance adopted under s.61.351, Wis. Stats., is permitted under s.61.351(5), Wis. Stats.

5.3 FLOODPLAINS - GENERAL PROVISIONS

(1) No modifications or additions to a nonconforming use or a nonconforming structure shall be permitted unless they are made in conformity

with the provisions of this ordinance for the area of the floodplain occupied. The words "modification" and "addition" shall include, but not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Ordinary maintenance repairs are not considered modifications or additions; these include internal and external painting, decorating, paneling and the replacement of doors, windows and other nonstructural components; and the maintenance, repair or replacement of existing private sewage or water supply systems, or connections to public utilities.

(2) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would exceed fifty percent (50%) of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance and contiguous dry land access is provided in compliance with s.4.3(3)(a).

(3) As requests are received for modifications or additions to nonconforming uses or nonconforming structures in the floodplain, a record shall be kept which lists the nonconforming uses and nonconforming structures, their present equalized assessed value, and the cost of those additions or modifications which have been permitted, and the percentage of the structure's total current value those modifications represent.

(4) If any nonconforming structure or any structure with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the requirements of this ordinance. For the purpose of this subsection, restoration is deemed impractical where the total cost of such restoration would exceed 50% of the present equalized assessed value of the structure.

5.4 FLOODWAY AREAS

(1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in a floodway

area, unless such modification or addition:

(a) Has been granted a permit or variance; and

(b) Meets criteria of s.5.3; and:

(c) Will not increase the obstruction to flood flows or regional flood height; and

(d) Any addition to an existing structure shall be floodproofed, pursuant to s.4.1(9), by means other than the use of fill, to the flood protection elevation;

(2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all local ordinances and Ch. ILHR 83, Wis. Adm. Code.

(3) No new well or modification to an existing well, used to obtain water for ultimate human consumption, shall be allowed in a floodway area. Any replacement, repair or maintenance of an existing well in a floodway area shall meet the applicable requirements of this ordinance and Chs. NR 111 and NR 112, Wis. Adm. Code.

5.5 FLOODFRINGE AREAS

(1) No modification or addition shall be allowed to any nonconforming structure with a nonconforming use in the floodfringe area unless such modification or addition has been granted a permit or variance and, except where par. (2) below is applicable, the modification or addition is placed on fill or is floodproofed to the flood protection elevation in compliance with the applicable regulations for that particular use in s.4.3.

(2) Where compliance with the provisions of par. (1) above would result in unnecessary hardship, and only where the structure will not be used for human habitation or be associated with a high flood damage potential the board of appeals, using the procedures established in ss.6.6 and 6.65, may grant a variance from those provisions, for modifications or additions, using the criteria listed below. Modifications or additions which are protected to elevations

lower than the flood protection elevation may be permitted provided:

(a) No floor is below regional flood elevation for residential or commercial structures; and

(b) Human lives are not endangered;

(c) Public facilities, such as water or sewer, will not be installed;

(d) Flood depths will not exceed two feet;

(e) Flood velocities will not exceed two feet per second; and

(f) The structure will not be used for storage of materials described in 4.3(3)(e).

(3) If neither the provisions of par. (1) or (2) above can be met, an addition to an existing room in a nonconforming building or a building with a nonconforming use may be allowed in the floodfringe on a one-time basis only, if the addition:

(a) Meets all other regulations and will be granted by permit or variance; and

(b) Does not exceed 60 sq. feet in area; and

(c) In combination with other previous modifications or additions to the building, does not exceed 50% of the present equalized assessed value of the building.

(4) All new on-site sewage disposal systems, or addition to, replacement, repair or maintenance of an on-site sewage disposal system, in a floodfringe area shall meet all the applicable provisions of all local ordinances and Ch. ILHR 83, Wis. Adm. Code.

(5) All new wells, or addition to, replacement, repair or maintenance of a well in a floodfringe area shall meet the applicable provisions of this ordinance and Chapters NR 111 and NR 112, Wis. Adm. Code.

6.0 ADMINISTRATION

Where a zoning administrator, planning agency, board of appeals, or other official has been appointed to administer a zoning ordinance adopted under s.62.23(7), Stats., these officials shall also administer this ordinance.

6.1 ZONING ADMINISTRATOR

The Zoning Administrator is hereby authorized to administer the provisions of this ordinance and shall have the following duties and powers:

(1) Advise applicants of the provisions of this ordinance, assist them in preparing permit applications and appeal forms, and insure that the



regional flood elevation for the proposed development is shown on all permit applications.

(2) Issue permits and certificates of compliance and inspect properties for compliance with this ordinance.

(3) Keep records of all official actions such as:

(a) All permits issued, inspections made and work approved;

(b) Documents of certified lowest floor and regional flood elevations for floodplain development

(c) Records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.

(4) Have access to any structure or premises between the hours of 8 a.m. and 6 p.m. for the purpose of performing these duties.

(5) Submit the following items to the Department District office:

1. Within 10 days of the decision, a copy of any decision on variances, conditional use permits, appeals for a map or text interpretation, and map or text amendments.

2. Copies of any case-by-case analyses, and any other information required by the Department including an annual summary of the number and types of floodplain zoning actions taken.

(6) Investigate, prepare reports, and report violations of this ordinance to the appropriate municipal planning agency and the municipal attorney for prosecution. Copies of the violation reports shall also be sent to the Department District Office.

(7) Submit copies of floodplain text and map amendments and biennial reports to the regional FEMA office.

6.2 LAND USE/ZONING PERMITS

(1) When Required

Unless another section of this ordinance specifically exempts certain types of development from this requirement, a land use/zoning permit shall be obtained from the zoning administrator before any new development, as defined in s.9.2, or any change in the use of an existing building or structure, including sewage disposal systems and water supply facilities, may be initiated.

(2) Applications

An application for a permit shall be made to the zoning administrator upon forms furnished and shall include

the following information for the purpose of proper enforcement of these regulations:

(a) GENERAL INFORMATION

1. Name, address, and telephone number of applicant, property owner and contractor-builder.

2. Legal description of the property and a general description of the proposed use or development indicating new construction or modification to existing structures.

(b) SITE DEVELOPMENT PLAN

The site development plan shall be drawn to scale and submitted as a part of the permit application form and shall contain the following information:

1. Location, dimensions, area and elevation of the lot noted on a copy of the Wetland Inventory Map, if applicable;

2. Location and boundaries of wetlands;

3. Specifications and dimensions for areas of proposed wetland alteration.

4. Location of the ordinary highwater mark of any abutting navigable waterways;

5. Existing and proposed topographic and drainage features and vegetative cover;

6. Location of any structures with distances measured from the lot lines and center line of all abutting streets or highways;

7. Location of any existing or proposed on-site sewage systems or private water supply systems;

8. Location and elevation of existing or future access roads; and

9. Location of floodplain and floodway limits on the property as determined from floodplain zoning maps used to delineate floodplain areas;

10. The elevation of the lot, lowest floor of proposed buildings and fill using National Geodetic and Vertical Datum (NFVD).

11. Data sufficient to determine the regional flood elevation in NGVD at the location of the development and to determine whether or not the requirements of Section 4.1 are met. This may include any of the information noted in Section 4.4(4).

12. Data sufficient to determine if the proposed development will cause either an obstruction to flow or an increase in regional flood height or discharge according to

s.4.1(5). This may include any of the information noted in s.4.2(3)(a).

(c) DATA REQUIREMENTS TO ANALYZE DEVELOPMENTS

1. The applicant shall provide all survey data and computations required to show the effect of the project on flood heights, velocities and floodplain storage, for all subdivision proposals, as "subdivision" is defined in s.236.02(8), Stats., and other proposed development exceeding 5 acres in area or where the estimated cost exceeds \$150,000. The applicant shall provide:

a. An analysis of the effect of the development on the regional flood profile, velocity of flow and floodplain storage capacity.

b. A map showing location and details of vehicular access to lands outside the floodplain,

c. A surface drainage plan with adequate details showing how flood damage will be minimized.

The estimated cost of the proposal shall include all structural development, landscaping improvements, access and road development, electrical and plumbing, and similar items reasonably applied to the overall development costs, but may not include land costs.

2. The Department will determine regional flood elevation and evaluate the proposal where the applicant is not required to provide computations as above, and inadequate data exists. The municipality may transmit additional information, such as the data in s.4.4(4) where appropriate, to the Department with the request for analysis.

(3) EXPIRATION

All permits issued under the authority of this ordinance shall expire one year from the date of issuance.

6.3 CERTIFICATES OF COMPLIANCE

(1) Except where no building, zoning or conditional use permit is required, no land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, rebuilt or replaced shall be occupied, until a certificate of compliance is issued by the zoning administrator subject to the following provisions:

(a) The certificate of compliance shall show that the building or premises or part thereof, and the

proposed use, conform to the provisions of this ordinance.

(b) Application for such certificate shall be concurrent with the application for a permit.

(c) The certificate of compliance shall be issued within 10 days after notification of completion of the work specified in the permit, providing the building or premises or proposed use conforms with all the provisions of this ordinance.

(d) The applicant shall submit a certification signed by a registered professional engineer or registered land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require a registered professional engineer or architect to certify that floodproofing adequacy meets the requirements of s.6.9.

(2) The zoning administrator may issue a temporary certificate of compliance for a building, premises or part thereof according to rules and regulations established by the municipality.

(3) Upon written request from the owner, the zoning administrator shall issue a certificate of compliance for any building or premises existing at the time of adoption of this ordinance, certifying after inspection, the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this ordinance.

(4) The applicant must secure all other necessary permits from all appropriate federal, state, and local agencies, including those required by the U.S. Army Corps of Engineers under s.404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334.

6.4 FEES

The City Council or Village Board may resolve to adopt the following fees.

(1) Building, zoning and conditional use permits.

(2) Certificates of compliance.

(3) Public hearings.

(4) Legal notice publications.

6.5 PLANNING COMMISSION/COMMITTEE

(1) The City/Village (planning Commission/Committee) shall:

(a) oversee the functions of the office of the zoning administrator;

(b) review and make recommendations to the Governing body on all

proposed amendments to this ordinance, maps and text.

(c) hear requests for conditional use permits under section 6.7 or this ordinance (*Note: modify this section if the planing commission/committee is not the designated government body that hears CU's in your community*)

(2) This planning commission/committee shall not:

(a) grant variances to the terms of the ordinance in place of action by the Board of Appeals; nor

(b) amend the text or zoning maps in place of official action by the Governing body.

6.6 BOARD OF APPEALS

The municipality's chief executive office shall appoint a Board of Appeals under s.62.23(7)(e), Wis. Stats., consisting of five members subject to confirmation by the governing body. The Board of Appeals shall exercise the powers conferred by Wis. Stats., and adopt rules for the conduct of their business as required by s.62.23(7)(e)3., Wis. Stats.

(1) Powers and Duties

The Board of Appeals shall:

(a) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance.

Conditional Uses (*Note: delete section (b) if the BOA is not the designated government body to hear CU's in your community*)

(b) Hear and decide applications for any conditional use permits required by this ordinance under Section 6.7.

Variances

(c) Hear and decide, upon appeal, a variance from the dimensional standards of this ordinance pursuant to s.6.6.

Boundary Disputes

(d) Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map.

(2) Appeals to the Board

Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any decision of the zoning administrator or other administrative officer. Such appeals shall be taken within _____ days

as provided by the rules of the Board, by filing with the official whose decision is in question, and with the Board of Appeals, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the Board all the documents constituting the record concerning the matter appealed.

(3) Hearing Appeals and Applications for Variances and Conditional Use Permits.

(a) Notice - The Board shall:

1. Fix a reasonable time for the hearing;

2. Publish adequate notice pursuant to Wis. Stats., specifying the date, time and place and subject of the hearing.

3. Assure that notice shall be mailed to the parties in interest and the appropriate district office of the Department at least 10 days prior to the hearing.

(b) Hearing - Any party may appear in person or by agent or attorney. The board shall:

1. Resolve boundary disputes according to s.7.3(3).

2. Decide variance applications according to s.7.3(4)

3. Decide appeals of permit denials according to s.7.4.

(c) Decision - The final decision regarding the appeal or variance application shall:

1. Be made within a reasonable time;

2. Be sent to the appropriate district office of the Department within 10 days of the decision;

3. Be a written determination signed by the chairman or secretary of the board;

4. State the specific facts which are the basis for the Board's decision;

5. Either affirm, reverse, vary, or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the application for a variance;

6. Include the reasons or justifications for granting an appeal, with a description of the hardship or practical difficulty demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the board proceedings.

(4) BOUNDARY DISPUTES

The following procedure shall be used by the Board of Appeals in hearing disputes concerning the district

boundaries shown on the official floodplain zoning map:

(a) Where a floodplain district boundary is established by approximate or detailed floodplain studies, the regional flood elevations or profiles for the point in question shall be the governing factor in locating the district boundary. If no regional flood elevations or profiles are available to the board, other available evidence may be examined.

(b) In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present arguments and technical evidence to the board of appeals.

(c) Where it is determined that the district boundary is incorrectly mapped, the board should inform the planning agency or the person contesting the location of the boundary to petition the municipality for a map amendment.

6.65 VARIANCES

(1) The Board of Appeals may, upon appeal, grant a variance from the dimensional standards of this ordinance where an applicant convincingly demonstrates that:

(a) Literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship on the applicant;

(b) The hardship is due to adoption of this ordinance and special conditions unique to the property; and not common to a group of adjacent lots or premises (in such case the zoning ordinance or map must be amended);

(c) Such variance is not contrary to the public interest.

(d) Such variance is consistent with the purpose of this ordinance in s.1.1.3.

(2) A variance shall not:

(a) Allow any floor of a basement or crawlway below the regional flood elevation for residential or commercial structures;

(b) Grant, extend or increase any use prohibited in the zoning district;

(c) Be granted for a hardship based solely on an economic gain or loss;

(d) Be granted for a hardship which is self created;

(e) Damage the rights or property values of other persons in the area;

(f) Permit a lower degree of flood protection in the floodplain than the

flood protection elevation. In the floodfringe area, a lower degree of flood protection than the flood protection elevation may only be allowed pursuant to s.5.5(2).

(g) Allow actions without the amendment to this ordinance or maps required in s.7.1.

(h) Allow any alteration of an historic structure, including its use, which would preclude its designation as an historic structure.

(3) When a variance is granted in a floodplain area the Board shall notify the applicant in writing that increased flood insurance premiums and risks to life and property may result. A copy of this notification shall be maintained with the variance appeal record.

6.7 CONDITIONAL USE PERMITS

(1) Any use listed as a conditional use in this ordinance shall be permitted only after an application has been submitted to the zoning administrator and a conditional use permit has been granted by the City/Village, following the procedures in s.6.6(3). To secure information upon which to base its determination, the Board of Appeals may require the applicant to furnish, in addition to the information required for a building/zoning permit, other pertinent information which is necessary to determine if the proposed use is consistent with the purpose of this ordinance.

(2) Upon consideration of the permit application and the standards applicable to the permitted uses in this ordinance, the Board of Appeals shall attach such conditions to a conditional use permit, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance as listed in s.1.1.3. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; erosion protection measures; increased side yard setbacks; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking areas and signs; and type of construction.

6.8 TO REVIEW APPEALS OF PERMIT DENIALS

(1) The Board of Appeals shall review all data constituting the basis for the appeal of permit denial. This data may include (where appropriate):

(a) Permit application data listed in s.6.2(2);

(b) Floodway/floodfringe determination data in s.4.4(4);

(c) Data listed in s.4.2(3)(a) where the applicant has not submitted this information to the zoning administrator.

(d) Other data submitted to the zoning administrator with the permit application, or submitted to the Board with the appeal.

(2) For appeals of all denied permits the Board shall:

(a) Follow the procedures of s.6.5;

(b) Consider any Zoning Agency recommendations;

(c) Either uphold the denial or grant the appeal.

(3) For appeals concerning increases in regional flood elevation the Board shall:

(a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases equal to or greater than 0.01 foot may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners.

(b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase equal to or greater than 0.01 foot provided no other reasons for denial exist.

6.9 PUBLIC INFORMATION

(1) Where useful, marks on bridges or buildings or other markers may be set to show the depth of inundation during the regional flood at appropriate locations within the floodplain.

(2) All available information in the form of maps, engineering data and regulations shall be readily available and should be widely distributed.

(3) All legal descriptions of property in the floodplain should include information designating the floodplain zoning classification when such property is transferred.

7.0 AMENDING FLOODPLAIN AND SHORELAND-WETLAND ZONING REGULATIONS-PROCEDURES

7.1 The municipal governing body may supplement or change the district boundaries and the regulations

contained in this ordinance according to s.62.23(7)(d)2., Wis. Stats., NR 116 and 117, Wis. Adm. Code, and the following:

(1) The Shoreland-Wetland District amendment provisions of s.3.4 and the Floodplain District amendment provisions of s.4.1 apply.

(2) All proposed text and map amendments shall be referred to the municipal planning agency, and a public hearing shall be held as required by s.62.23(7)(d)2., Wis. Stats., following publications of a Class 2 notice as defined in s.9.2. Copies of the proposed amendment and notice of the public hearing shall be submitted to the appropriate district office of the Department at least 10 days prior to such hearing.

(3) A copy of the decision on each amendment shall be provided to the Department district office within 10 days of the decision.

8.0 ENFORCEMENT AND PENALTIES

Any violation of the provisions of this ordinance, by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not less than \$_____ nor more than \$_____ per offense, together with the taxable costs of such action. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to s.87.30(2), Wis. Stats.

9.0 DEFINITIONS

9.1 The terms or words used in this ordinance shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distance, unless otherwise specified, shall be measured horizontally.

9.2 The following terms used in this ordinance mean:

(1) "A-zones" - Those areas shown on a municipality's "Official Floodplain Zoning Map" (see definition) which would be inundated by the base flood or "regional flood" as defined herein. These areas may be numbered or unnumbered A-Zones. The A-Zones

may or may not be reflective of flood profiles, depending on the availability of data for a given area.

(2) "Accessory structure or use" - A detached subordinate structure or a use which is clearly incidental to, and customarily found with, the principal structure or use to which it is related and which is located on the same lot as that of the principal structure or use.

(3) "Basement" - Any enclosed area of a building having its floor subgrade, i.e., below ground level, on all sides.

(4) "Boathouse" - As defined in section 30.121(1), Wis. Stats., means a permanent structure used for the storage of watercraft and associated materials and includes all such structures which are totally enclosed, have roofs or walls or any combination of structural parts.

(5) "Bulkhead line" - A geographic line along a reach of navigable water that has been specified by adoption of a municipal ordinance and approved by the Department of Natural Resources pursuant to s.30.11, Wisconsin Statutes, and which allows limited filling between the bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.

(6) "Certificate of compliance" - A certification issued by the zoning administrator stating that any construction and use of land or a building, the elevation of fill or the first floor of a structure is in compliance with all of the provisions of this ordinance.

(7) "Channel" - A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

(8) "Conditional Use" - A use which is permitted by the ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the Board of Appeals or, where designated, the village board/common council, or the planning & zoning commission.

(9) "Department" - The Wisconsin Department of Natural Resources.

(10) "Development" - Any new use, change of use and any change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; any placement of mobile homes; the construction of

additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching; lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials, public or private sewage disposal systems or water supply facilities.

(11) "Drainage system" - One or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

(12) "Dryland Access" - A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

(13) "Encroachment" - Any fill, structure, building, use or development in the floodway.

(14) "Environmental control facility" - Any facility, temporary or permanent, which is reasonably expected to abate, reduce, or aid in the prevention, measurement, control or monitoring of noise, air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

(15) "Existing manufactured or mobile home park or subdivision" - A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale on which the construction of facilities for servicing the lots (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this ordinance.

(16) "Expansion to existing mobile/manufactured home park" - Means the preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be placed. This includes installation of utilities, either final site grading, pouring pads, or construction of streets.

(17) "Federal Emergency Management Agency (FEMA)" - The federal agency that administers the National Flood Insurance Program.

(18) "Fixed houseboat" - As defined in s.30.121(1), Wis. Stats., means a structure not actually used for navigation which extends beyond the ordinary highwater mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

(19) "Flood" or "Flooding" - A general and temporary condition or partial or complete inundation of normally dry land areas caused by:

a) The overflow or rise of inland waters;

b) The rapid accumulation of runoff or surface waters from any source; and

c) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; and

d) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

(20) "Flood Frequency" - the probability of a flood occurrence which is generally determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent (%) chance of occurring in any given year.

(21) "Floodfringe" - That portion of the floodplain outside of the floodway which is covered by floodwaters during the regional flood; it is generally associated with standing water rather than rapidly flowing water.

(22) "Flood Hazard Boundary Map" - A map prepared for the municipality by FEMA designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. These maps form the basis for both the regulatory and insurance aspects of the National Flood Insurance Program.

(23) "Flood Insurance Study" - A technical engineering examination, evaluation, and determination of flood hazard areas. It provides maps designating those areas affected by

the regional flood and provides both flood insurance rates zones and regional flood elevation as well as floodway lines. The flood hazard areas are designated as numbered or unnumbered A-Zones. Flood insurance study maps form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

(24) "Floodplain" - That land which has been or may be hereafter covered by floodwater during the regional flood. The floodplain includes of the floodway and the floodfringe and general floodplain areas.

(25) "Floodplain Island" - A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

(26) "Flood profile" - A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

(27) "Floodproofing" - Any combination of structural and nonstructural additions, changes or adjustments which reduce or eliminate flood damage to unimproved or improved real estate, water and sanitary facilities, structures and their contents.

(28) "Flood protection elevation" - An elevation that corresponds to a point two feet of freeboard above the water surface profile associated with the regional flood. (Also see: FREEBOARD.)

(29) "Floodway" - The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

(30) "Floodway encroachment lines" - Represent the limits of obstruction to flood flows. These lines are designated on both sides of, and generally parallel to, the channel of a river or stream. They are established by assuming that the area landward (outside of the encroachment lines) will ultimately be developed in such a way that it will not convey flood flows, but the development will not cause an increase to regional flood elevations upstream. It is assumed that any development riverward of these lines will cause an obstruction and will require a detailed

analysis to determine its effect on the regional flood elevation upstream.

(31) "Freeboard" - Represents a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard compensates for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and the sedimentation of a river or stream bed.

(32) "Hearing Notice" - Publication or posting meeting the requirements of Ch. 985, Wis. Stats. Class 1 notice is required at a minimum for appeals; published once at least one week (7 days before the hearing). Class 2 notice is required at a minimum for all zoning ordinances and amendments including map amendments; published twice, once each week consecutively, the last publication at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice exceeding these minimums.

(33) "High flood damage potential" - Any danger to human life or public health or the potential for any significant economic loss to a structure or its contents.

(34) "Historic structure" - Any structure that is:

(a) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program,

as determined by the Secretary of the Interior, or directly by the Secretary in states without approved programs.

(35) "Increase in Regional Flood Height" - A Calculated upward rise in the regional flood elevation, equal to or greater than 0.01 foot, resulting from a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain, but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

(36) "Land use" - Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)

(37) "Mobile home" or "Manufactured Home" - A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. For the purpose of this ordinance, it does not include recreational vehicles or travel trailers which remain licensed and ready for highway use and remain on-site less than 180 days.

(38) "Navigable waters" - Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. The Wisconsin Supreme Court has declared navigable bodies of water with a bed differentiated from adjacent uplands and with levels or flow sufficient to support navigation by a recreational craft of the shallowest draft on an annually recurring basis. [Muench v. Public Service Commission, 261 Wis. 492 (1952) & DeGayner and Co., Inc. v. Department of Natural Resources, 70 Wis. 2d 936 (1975)]

(39) "Obstruction to Flow" - Any development which physically blocks the conveyance of floodwaters such that this development by itself or in conjunction with any future similar development will cause an increase in regional flood height.

(40) "Official floodplain zoning map" - That map, adopted and made part of this ordinance, as described in s.2.7, which has been approved by the Department and FEMA.

(41) "Open space use" - Those uses having a relatively low flood damage potential and not involving structures.

(42) "Ordinary highwater mark" - The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

(43) "Person" - An individual, or group of individuals, corporation, partnership, association, municipality or state agency.

(44) "Planning agency" - The municipal planning commission, agency, committee or a board of public land commissioners of the municipality's governing body created under s.62.23(1), Wis. Stats., which act on matters pertaining to planning and zoning.

(45) "Regional flood" - A flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics. The flood frequency of the regional flood is once in every 100 years. This means that in any given year, there is a 1% chance that the regional flood may occur or be exceeded. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurrence. The regional flood is based upon a statistical analysis of streamflow records available for the watershed or an analysis of rainfall land runoff characteristics in the general watershed region or both. FEMA uses the term "base flood" which means the regional flood.

(46) "Shoreland" - Lands within the following distances from the ordinary highwater mark of navigable waters; 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

(47) "Shoreland-wetland district" - The zoning district, created in this zoning ordinance, comprised of shoreland that are designated as wetland on the wetlands inventory maps which have been adopted and made a part of this ordinance.

(48) "Storage capacity of a floodplain" - The volume of space

above an area of floodplain land that can be occupied by flood water or a given stage at a given time, regardless of whether the water is moving.

(49) "Substantial improvement" - Any structural repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the present equalized assessed value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. The term does not, however, include either:

(a) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which existed before the improvement began, was identified by a municipal official and are necessary to assure safe living conditions.

(b) Any alteration of a designated historic structure (see definition) or site documented as deserving preservation by the Wisconsin State Historical Society, or listed on the National Register of Historic Places provided the alteration will not preclude the structure's continued designation as a historic structure.

Ordinary maintenance repairs are not considered structural repairs, modifications or additions. Such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other nonstructural components. "Substantial improvement" begins when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

(50) "Unnecessary hardship" - That circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with the restrictions governing dimensional standards (such as area, setbacks, frontage, or height) unnecessarily burdensome or unreasonable in light of the purpose of this ordinance. Unnecessary hardship is present only where, in the absence of a variance, no feasible use can be made of the property.

(51) "Variance" - An authorization granted by the Board of Appeals to construct, alter or use a building or structure in a manner that deviates

from the dimensional standards of this ordinance. A variance may not permit a use of property otherwise is prohibited by the ordinance or allow construction not protected to the flood protection elevation.

(52) "Water surface profile" - A graphic representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

(53) "Wetland" - Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

(54) "Wetlands alteration" - Any construction filling, flooding, draining, dredging, ditching, tiling, excavating, temporary water level stabilization measures or dike and dam construction in a wetland area.

This ordinance shall take effect and be in force upon its passage and publication.

This ordinance was unanimously passed and adopted at a regular meeting of the City of Buffalo City on October 10, 1994.

WILLIAM BRUEGGER, Mayor
ATTEST
SUSAN KELLER, Clerk

This ordinance was unanimously passed and adopted at a regular meeting of the Village of Cochrane on October 11, 1994.

LYLE E. McFARLIN, JR., President
ATTEST
LOIS FETTING, Clerk

Published November 3, 1994.

